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SUBJECT: SUPPORTING CIVILIAN SECURITY AND RULE OF LAW IN SOUTHERN
SUDAN

¶1. (SBU) SUMMARY: As the major portion of the INL bilateral program gets underway in Southern Sudan, the INL officer has made several significant observations over the last two months (outlined in this cable) which will result in adjustments to the INL program. The current fragile condition of the criminal justice system in Southern Sudan, coupled with a precarious political and security situation as we head into the fourth year of the Comprehensive Peace Agreement (CPA), require some adjustments in the implementation of basic police assistance and programs supporting the justice sector. Most significant among these adjustments is that while the program had originally been envisaged to be focused on the reconstruction of a criminal justice system for the South following the long North-South civil war, the INL Justice and Law Enforcement program will now also direct assistance toward projects that will help maintain civil order and aid civilian security forces in preparing for larger-scale problems such as riot control and supporting efforts in other areas of rule of law that are aimed at mitigating conflict. END SUMMARY.

¶2. (SBU) Southern Sudan is experiencing one of the most challenging periods since the Sudan People's Liberation Movement signed the Comprehensive Peace Agreement in January 2005. Despite extensive reform programs being undertaken by the international community and local actors, serious problems remain for the Government of Southern Sudan (GoSS) in reforming the criminal justice sector. Some of the key elements hindering reform in the administration of justice and in insuring the security of civilians are detailed below. Following that is a brief description of INL's planned bilateral program activities over the coming year.

Political Situation Affecting Rule of Law

¶3. (SBU) Elections: The uncertain political situation surrounding elections in Southern Sudan is a major source of concern with regard to security. Both the Government of National Unity and the GoSS had problems in forming a National Elections Commission and reaching an agreement on the timing and specific parameters of the upcoming elections. Frequently, GoSS contacts at the highest levels within the Ministry of Legal Affairs and the Ministry of Internal Affairs express their strong belief that Southern Sudan should forego elections and move straight to a referendum on secession in 2011. As INL attempts to navigate this environment and implement a project to support an Elections Security Program for Southern Sudan, key issues relating to logistics, division of responsibility between the police and the military and the sheer scale of activities required have not been contemplated to the degree needed. Indeed, international and local actors working in the rule of law sector have expressed the belief that Southern Sudan's vision of its own development and future is not clear beyond 2011.

¶4. (SBU) Legislation: As the GoSS concentrates efforts on the short term, a longer-term view, one that extends beyond the deadlines of

the next two years, takes a back seat. For example, the Ministry of Legal Affairs and Constitutional Development have been pushing legislation through the system as quickly as possible before the Legislative Assembly breaks at the end of November, without enough regard for content. In some instances, including with the Police Bill, legislation has been submitted to the Legislative Assembly only to be rejected. Key legislation within the criminal justice field, such as the Criminal Procedure Code, does not undergo the kind of consultation necessary to ensure proper due process, protection of human rights or support of the balance of power. The current Code grants overarching authority to prosecutors to issue arrest warrants, direct investigations and dismiss cases. Caught in the middle of this are the international advisors placed in the Ministry assigned to provide mentoring assistance in areas of legislative drafting. Due to the minimal capacity of many staff to undertake their functions, especially at the lower levels, there has been a tendency by international advisors and very senior GoSS officials to undertake many jobs, such as the drafting and proofreading of laws, on their own in order to meet tight deadlines.

As a result, those at the higher levels are not able to delegate work, leaving them overburdened and unable to focus on policy and reform and leaving lower level staff out of any substantive process of mentoring or training to improve their skills.

15. (SBU) Decentralization: Another problem created by the uncertain political situation is the push by the GoSS to move forward with efforts at decentralization and devolution of power to the States under the CPA without a clear concept of what the consequences of this will mean in practice, particularly in the area of civilian security and administration of justice. There is currently a serious need for the Southern Sudan Police Service to adopt a basic and universal police training program, one that is geared to a force

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with a low level of literacy and that focuses on turning military-style thinking into an emphasis on civilian service, is an example of a program that could potentially fall apart under a decentralized model. Discussions on creating a national police force capable of properly dealing with problems that will arise in the course of elections and a referendum have not been a part of the GoSS interagency dialogue.

16. (SBU) Return to Conflict: The final and probably most critical factor in the current political and security climate in Southern Sudan is the fear by many in the South that there will be a return to conflict with the North. This expectation has dramatically increased as a result of such events as the fighting in Abyei in May 2008, the ongoing disagreement over hard currency reserves and the expected ICC indictment against President Bashir., Heightened Lord's Resistance Army (LRA) tensions along the Ugandan and DRC borders also increase the potential for conflict. At the same time, the SPLA is under considerable pressure to downsize its numbers. These pressures have led the GoSS to: 1) spend massive resources on building up the SPLA, including the military police, at the expense of support to a nascent and beleaguered civilian police force and 2) adopt a system of "transferring" SPLA and other armed groups to the SSPS, the Prisons Service and other security forces such as the Wildlife Service, rather than demobilize them. Over the last eight months nearly 7,000 military personnel have been transferred to the SSPS and the Prisons Service, where they are readily available to take up arms again in the event of conflict. The Ministry of Internal Affairs (MIA) has essentially taken on these personnel in an effort to avoid the kind of internal conflict that might accompany the release of these soldiers into civil society, where most of them would probably not be able to find jobs. Many of these "demobilized" troops are well-paid officers rather than lower paid non-commissioned officers, thereby forcing the MIA to expend almost 90% of its budget on salaries rather than on severely needed training and infrastructure support for the SSPS. The SSPS and Prison Service have now been flooded with people whose loyalties are uncertain and who are not dedicated to the development of a democratic police and prison system. In what seems to be an attempt to come to terms with this problem, a major element in draft legislation for the police and prison systems has included a requirement that these services create internal "courts" with the power to pass death sentences on their own personnel. It is hoped

that this will serve as a strong deterrent to police and others who carry weapons from participating in conflict and committing serious offences.

INL Program in Southern Sudan

¶17. (U) In this environment, it is critical that criminal justice assistance programs be highly focused. Broad initiatives aimed at changing institutions and attitudes may not receive GoSS buy-in due to a lack of political will and in the face of political uncertainty over the next two years. INL programming, as designed, will continue to support democratic legal institutions as envisaged in the Interim Constitution of Southern Sudan. However, programs will focus on minimizing the potential for conflict while seeking to demonstrate what can be achieved for police reform in times of peace.

¶18. (U) INL programs, over the next year, will focus on four major areas: basic law enforcement assistance; support to the police for the acceptance of democratic administration of justice; basic support to the corrections system and development of alternatives to incarceration; and aiding the GoSS in developing an elections and referendum security plan that will provide a key division of responsibilities between the military and the police.

¶19. (U) INL's main contractor, PAE, will implement a basic police training and support program as part of its Comprehensive Criminal Justice Sector Development Program. International Police Advisors have already begun to support the SSPS in drafting a new basic curriculum that will standardize training across the region and embody democratic concepts and respect for human rights as well as one that includes basic English language training as a way of building internal capacity. Once the SSPS has finalized the training concepts and produced lesson plans, the program will undertake a major effort to support instructor development and build a cadre of Sudanese mid-level police who will train non-commissioned officers across the region. The literacy program will draw on support from the Ministry of Education of Southern Sudan to employ, when possible, Sudanese English language teachers as part of the training.

¶10. (U) As has been the case in other, similar INL programs, this

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light-footprint approach seeks buy-in from the host government and allows for international advisors to be free to aid in other areas of organizational restructuring and support where needed. In this case, the advisors can help design a program for dealing with "transferred" military officers who will need a place within the system that utilizes them but does not threaten vulnerable populations. Another area where INL will be focused includes building an asset management control system to both assess needs and build a system that will better track scarce resources. Over the coming months, as INL future funding levels become clearer, it will be necessary to utilize additional resources on a field officer training and mentoring program and on developing a basic communications system that builds on a project begun by the Germans at the state level. Focus will be on organizing command and control, understanding reporting procedures and increasing mobility of the police to ensure that they can respond during emergencies and protect civilians during times of conflict.

¶11. (U) Closely connected to the program above, the rule of law program, carried out under the direction of the INL Criminal Justice Advisor, will focus on developing key legislation that provides targeted training on criminal laws and international fair trial standards with core groups of police, prosecutors and judges. Legal training of police will be a major focus of the program, as well as developing networks between the statutory criminal courts system and traditional leaders administering customary law, with a focus on conflict mitigation, particularly in the area of violent crime. INL is providing a print service management system to the Ministry of Legal Affairs as a basic capability to print and disseminate laws to the citizenry across the region. As police undergo basic training and become more aware of laws and their responsibilities, their ability to interact more effectively with the general population

increases exponentially, thereby improving essential relations between the police and the public.

¶11. (U) To address the larger problems associated with protecting the civilian population during periods of instability, INL will undertake a major effort aimed at supporting elections security. A senior advisor will work with GoSS military and police entities to build a longer-term strategy for managing major events such as elections with an aim toward helping the GoSS focus on the need to remove the military from its current major role of providing civilian security. Beyond policy, the program will provide specific training and assistance to police units who will fulfill rapid response functions such as riot and civil disorder management.

¶12. (U) Finally, INL is funding the United Nations Office on Drugs and Crime to support a basic corrections reform program. Funds are aimed at institutionalizing prison management procedures that promote security and the well being of prisoners, with an emphasis on the needs of vulnerable populations such as women and children. One of the most significant aspects of this program so far has been INL's involvement in the draft legislation of the Prisons Bill which involved a multi-agency working group to hash out key aspects of the rights of prisoners. The other main area of support is in helping reduce the burden of prisoners within the system, almost 60% of whom have not been arraigned due to the lack of capacity within the statutory courts. Alternatives to incarceration such as instituting probation and parole systems and decriminalizing adultery are some aspects of the strategic plan that was drafted by a senior GoSS working group last summer. Implementing this strategy will continue through INL funding in the coming months.

¶13. (U) COMMENT: As Southern Sudan approaches key milestones such as the 2009 elections and the 2011 referendum, the threat of armed conflict increases and the need to contain conflict where possible will rise. As CPA implementation progresses (in fits and starts), critical and practical support to the police and administrators of justice through targeted training, the provision of some equipment, and key interventions with the GOSS on justice and law enforcement will become a primary focus of the INL program. Continued and increased funding to the INL program in Southern Sudan is now and will become an even more vital piece of the U.S. contribution to preserving stability in Southern Sudan and implementing US foreign policy objectives in seeing the CPA survive.

FERNANDEZ